Spring 2014

Logan A. Wheeler, Best of Section B

Logan A. Wheeler

No. 12-696a

IN THE

Supreme Court of the United States

MARTIN COUNTY AND MARTIN COUNTY BOARD,

Petitioners,

v.

ANNE DHALIWAL,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Seventeenth Circuit

BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

I. Did the United States Court of Appeals for the Seventeenth Circuit apply the correct legal standard?

II. Does the Martin County legislative prayer practice violate the Establishment Clause of the First Amendment?

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BRIEF FOR PETITIONER

OPINIONS BELOW

The Opinion and Order of the Seventeenth Circuit (R. at 32) is unreported. The United States District Court for the Northern District of West Carolina's Opinion and Order Granting Defendants' Motion to Dismiss (R. at 27) is unreported.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on February 1, 2013. (R. at 32.) Petitioner filed his petition for writ of certiorari on February 7, 2013. (R. at 35.) This Court granted the petition on May 20, 2013. (R. at 37.) This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2006).

STANDARD OF REVIEW

A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo*.

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides, in relevant part:

> Congress shall make no law respecting an establishment of religion….

U.S. CONST. amend. I.

STATEMENT OF FACTS

Since 1985, Martin County Board has maintained a practice of opening its public meetings with a legislative prayer. (R. at 27.) The purpose of the practice is to bring together members of the community before lawmaking commences. (R. at 20.) The Board's practice is similar to that of Congress and many other legislative bodies throughout the country, which also begin public sessions with an invocation. (R. at 18.)

The prayer leaders selected to give invocations at Martin County Board meetings are volunteers from established religious congregations within Martin County. (R. at 27-28.) Martin County has approximately 283 established religious congregations, most of which are Christian. (R. at 28.) Of these congregations, approximately 185 that have either participated in the prayer opportunity in the past or expressed an interest in doing so appear on a list maintained by the Board and its volunteers. (R. at 27-28.) The list is organized alphabetically, and each month a volunteer sends letters signed by the chairman to invite congregations next on the list to participate in an upcoming invocation. (R. at 10.) A leader from any congregation located within Martin County is welcome to volunteer to lead the prayer. (R. at 10.) The Board does not regulate or contribute to the prayers' content, and the only instruction given to potential prayer leaders is that their prayers be kept under five minutes. (R. at 28.) The prayers are not incorporated into the Board's meeting minutes but are captured in video and audio recordings that are archived online. (R. at 12.)

In April 2011, Anne Dhaliwal and her family moved to Martin County and began regularly attending Martin County Board meetings. (R. at 27.) The Dhaliwals are adherents of the Sikh religion, which does not preach a gospel or have a priest or leader. (R. at 7.) At the September 11, 2011, meeting, Anne Dhaliwal's husband, Manpreet Dhaliwal, addressed members of the Board, saying the practice of beginning each meeting with a prayer is "nice," but

the policy should be changed to "completely forbid" specific religious references, like those to Jesus Christ. (R. at 7.) Then-Chairman Benjamin Gates told Manpreet Dhaliwal the Board would consider his request.

On October 20, 2011, Anne Dhaliwal sent a letter to Benjamin Gates, asking that he meet with the Dhaliwal family to discuss the Board's prayer practice. (R. at 9.) Anne Dhaliwal wrote that she and her family were offended by the imposition of certain religions in the invocations and charged that the Board's practice constituted a violation of her family's First Amendment rights. (R. at 9.) Benjamin Gates did not respond to Anne Dhaliwal's letter because of the Board's policy of not responding to community concerns unless those concerns are brought up during a Board meeting. (R. at 16.) The Board maintains its response policy in an effort to uphold equality and fairness and to promote transparency and inclusiveness in its political processes. (R. at 16.)

On November 25, 2011, Anne Dhaliwal filed a complaint against Martin County and the Martin County Board in the United States District Court for the Northern District of West Carolina requesting a declaratory judgment that the Board's sponsorship of sectarian prayers violates the Constitution. (R. at 11-15.) Anne Dhaliwal also sought an injunction enjoining the Board from knowingly allowing sectarian prayers at board meetings and requiring the Board to advise its prayer givers that sectarian prayer is not permitted. (R. at 14-15.) The County and County Board filed a motion to dismiss on the grounds that Anne Dhaliwal failed to state an Establishment Clause violation for which relief could be granted. (R. at 18-22.) The district court granted Martin County and Martin County Board's motion to dismiss. (R. at 27-29.) Anne Dhaliwal appealed, and the United States Court of Appeals for the Seventeenth Circuit reversed

the judgment of the district court. (R. at 32-34.) On May 20, 2013, this Court granted Martin County and Martin County Board's Petition for Writ of Certiorari. (R. at 37-38.)

SUMMARY OF ARGUMENT

I. In the seminal legislative prayer case of *Marsh v. Chambers*, 463 U.S. 783 (1983), this Court recognized legislative prayer as a time-honored tradition that does not violate the First Amendment's Establishment Clause unless the prayer practice is used to proselytize or advance one religion over another. The *Marsh* standard proscribing legislative prayers that proselytize or advance a religion has been interpreted differently throughout the circuits, creating a circuit split.

The Ninth Circuit has adopted a facially neutral affiliation standard that requires a court to determine whether a legislative body has actively taken steps to affiliate itself with one religion. Actively affiliating itself with a religion would make the legislative body's prayer practice unconstitutional. This standard allows for diversity among communities across the nation to flourish because a court does not have to declare a practice unconstitutional solely because of a prevalence of one religion's prayers, which may result from a community's demographics and not any impermissible legislative bias. It also provides courts with an objective standard that can be applied consistently throughout the circuits in future legislative prayer cases. The Second Circuit has taken a totality of the circumstances approach, which requires a court to view a prayer practice as a whole from the standpoint of a reasonable observer to determine whether or not the practice advances one religion over others. This standard is subjective and may lead to inconsistent results throughout the circuits. The Fourth Circuit's frequency test calls for a court to review the frequency with which sectarian references are made to determine the constitutionality of a particular legislative prayer practice. Use of this test, however, will often directly conflict with *Marsh's* proscription of parsing the language of

legislative prayers because it requires a court to review the language of legislative prayers even when the prayer practice employed has not been deemed to proselytize or advance one religion over another.

The facially neutral affiliation standard employed by the Ninth Circuit guards against the issues raised by both the totality of the circumstances test and the frequency test, and its endorsement and application by this Court would provide much-needed clarity to legislative bodies interested in creating or continuing legislative prayer practices consistent with the Establishment Clause.

II. The prayer practice employed by the Martin County Board does not violate the Establishment Clause because the Board does not use the practice to proselytize or advance any one religion over another. The Board implemented a policy open to any and all established religious congregations within Martin County. The Board also proactively updated the list of local congregations it maintained to ensure its invitation process did not exclude a congregation interested in offering an invocation. It treated volunteer clergy members equally by only instructing them to limit their prayers to five minutes. No additional restrictions were placed on any volunteer. Furthermore, the Board did not include the content of the offered prayers in its official minutes. Excluding the prayers from the Board's official minutes is one example of how the Board has actively avoided any unconstitutional endorsement or affiliation with any of the prayer leaders' religious beliefs.

Through its neutral policy, the Martin County Board purposefully avoided affiliating itself with any religion. A reasonable observer viewing the practice in context would not find that the Board's actions rose to the impermissible standard of proselytizing or advancing one religion over others. Because the Board's actions did not meet this threshold set out in *Marsh*,

no inquiry into the frequency of sectarian references in the prayers should be made. Thus, Martin County Board's legislative prayer practice withstands constitutional scrutiny under the guidelines set forth by this Court, and the Board did not violate Anne Dhaliwal's First Amendment rights under whichever available legal standard this Court adopts.

ARGUMENT

I. THE COURT OF APPEALS FOR THE SEVENTEENTH CIRCUIT ERRONEOUSLY APPLIED THE SECOND CIRCUIT'S TOTALITY OF THE CIRCUMSTANCES TEST

A. Legislative prayer is a well-established, constitutionally-valid tradition deserving of protection.

The legitimacy of legislative prayer has been acknowledged by this Court on several occasions. *Marsh*, 463 U.S. at 792; *Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 602 (1989); *Joyner v. Forsyth Cnty.*, 653 F.3d 341, 346 (4th Cir. 2011). This Court's explicit recognition of legislative prayers as part of the very fabric of American society further illustrates the importance this Court has placed on maintaining legislative prayer practices. *See Marsh*, 463 U.S. at 792. Enjoying a unique status in Establishment Clause jurisprudence, the constitutionality of legislative prayer is recognized as a *sui generis* legal question. *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1231 (10th Cir. 1998) (en banc).

To this day, *Marsh v. Chambers* stands as the seminal case on legislative prayer and must be considered in any analysis regarding the constitutionality of a legislative body's prayer practice. In *Marsh*, this Court examined a state legislature's practice of opening each of its sessions with a prayer led by a chaplain paid from public funds. *Marsh*, 463 U.S. at 784. It concluded that legislative prayer practices that neither proselytize nor advance one faith over another do not violate the Establishment Clause. *Id*. at 795-96. In its review of the legislature's

practice, this Court emphasized the longstanding tradition of American legislatures opening meetings with invocational prayers. *Id*. at 786-90. That tradition began in the First Congress, which was made up of many of the country's Founding Fathers and the very draftsmen of the Constitution and the Bill of Rights. *Id*. at 787-88. Recognizing that members of the First Congress voted in favor of appointing a paid congressional chaplain during the same week they voted to approve the daft of the First Amendment, this Court aptly concluded that those members of the First Congress could not be understood as interpreting or intending the Establishment Clause to prohibit legislative prayer. *Id*. at 790. As evidenced by the unbroken history of the practice in federal, state and local legislatures for more than 200 years, a consensus has long existed as to the constitutionality of legislative prayer. *Id*. at 792. According to this Court, such long-standing traditions should be protected and preserved, not lightly cast aside. *See Walz v. Tax Comm'n of New York*, 397 U.S. 664, 678 (1970).

This Court demonstrated such protection of a long-standing tradition in *Marsh* when it declined to apply, as the Court of Appeals for the Eighth Circuit had, the strict three-part test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to determine the constitutionality of the Nebraska Legislature's prayer practice. *Marsh*, 463 U.S. at 786. The three elements of the *Lemon* test, which was the prevailing standard applied to Establishment Clause cases at the time, required the government's actions (1) maintain a secular legislative purpose, (2) have a principal or primary effect that neither advances nor inhibits religion, and (3) avoid fostering excessive government entanglement with religion. *Lemon*, 403 U.S. at 612-13. Under the *Lemon* test, the Nebraska Legislature's prayer practice in *Marsh* would have clearly been unconstitutional. By relaxing the standard applicable to legislative prayer cases in its seminal case on the issue, this Court indicated its view of the importance of protecting and preserving legislative prayer practices. A

new and more broadly-drawn line for legislative prayer cases was established in *Marsh* so that all legislative prayer practices that stop short of either proselytizing or advancing one religion at the expense of others may be upheld under the Establishment Clause. *See Marsh*, 463 U.S. at 795-96.

B. Application of the affiliation standard better conforms to the broad standard set forth by this Court in *Marsh*.

The proscription against proselytizing or advancing one religion over another is broad for the purpose of allowing various legislative prayer practices around the county to withstand constitutional scrutiny. The correct legal standard to apply in legislative prayer cases is that which most closely adheres to the broad guidelines set forth by this Court in *Marsh*.

The Ninth Circuit has read *Marsh* as requiring an inquiry into whether the government has either deliberately or through implication placed its imprimatur on a particular faith or religion. *Rubin v. City of Lancaster*, 710 F.3d 1087, 1095-96 (9th Cir. 2013), *cert. denied*, 2013 WL 3789507 (Oct. 7, 2013) (quoting *Joyner*, 653 F.3d at 362 (Niemeyer, J., dissenting)). In *Rubin*, the Ninth Circuit examined the acts of a city council to determine if the council had proactively taken steps to affiliate with one religion over others, applying what may appropriately be called the affiliation standard. *Id*. at 1097. Under the affiliation standard, a legislative body that, through its prayer practice, has taken steps to affiliate itself with a certain religion has crossed the line and begun to advance that religion over others, violating the Establishment Clause. *Id*. The affiliation to any religious organization or doctrine standard used by the Ninth Circuit was previously established by this Court. *Allegheny*, 492 U.S. at 590.

Unlike other standards employed by the circuits, the affiliation standard places the crux of a court's consideration of a prayer practice's constitutionality on the actions and intent of the legislative body under review. This not only encourages legislatures that would fall under such a

standard of review to carefully craft a neutral policy, but it also provides for an objective consideration of a prayer practice that can more easily be applied uniformly to future legislative prayer cases.

In *Rubin*, the Ninth Circuit upheld the city council's prayer practice even though most prayers were Christian because the council had developed a prayer policy that was carefully crafted to ensure its own evenhandedness and avoid violating the Establishment Clause. *Rubin*, 710 F.3d at 1097. The council had taken steps to be inclusive, and the fact that most prayers were Christian was merely a reflection of the city's demographics and a function of the religious leaders who chose to respond to the city's invitations. *Id*. at 1098.

This country has long appreciated the highly-regarded principle of protecting diversity. Indeed, a primary aim of the First Amendment is to protect diversity of ideas and opinions generally and of religious beliefs specifically. *See* U.S. CONST. amend. I. When such a benign factor as local demographics is the primary reason for a majority of the prayers representing one religion, it would go against reason and this Court's precedent to indiscriminately toss out the entire prayer practice. *See Joyner*, 653 F.3d at 363 (Niemeyer, J., dissenting).

The clear directive of *Marsh* is that the government may not proselytize or advance one religion over others. *Marsh*, 463 U.S. at 795-96. Where a legislature has not crossed this line in its prayer practice, it has not violated the Establishment Clause. *See id*. The affiliation standard employed by the Ninth Circuit closely adheres to the legislative prayer guidelines established in and required by *Marsh* without arbitrarily adding considerations that would narrow the scope of the standard this Court outlined.

C. The Second Circuit's totality of the circumstances test requires impermissible parsing of the language of legislative prayers and undermines the efforts of legislatures that actively maintain neutral policies.

Every legislative prayer practice must fall within the bounds set by *Marsh*, which remains a fixed point within this Court's Establishment Clause jurisprudence. *See Marsh*, 463 U.S. at 786; *Galloway v. Town of Greece*, 681 F.3d 20, 28 (2d Cir. 2012), *cert. granted*, 133 S. Ct. 2388 (May 20, 2013). In their efforts to define those bounds, some circuits have adopted standards that arbitrarily narrow the scope of constitutionality outlined in *Marsh*. The Second Circuit's totality of circumstances test provides an example.

In *Galloway v. Town of Greece*, the Second Circuit faced a case of first impression on the constitutionality of a particular legislative prayer practice. *Id*. at 26. It adopted a totality of the circumstances test to determine the constitutionality of the Town of Greece's prayer policy. *Id*. at 29. That test required the court to decide whether the town's practice, viewed in its totality from the standpoint of an ordinary, reasonable observer, conveyed the view that the town favored or disfavored certain religious beliefs. *Id*. In so doing, the court reviewed the selection process of the prayer-givers, the content of the prayers and the actions and inactions of town officials and invited prayer givers to hold the town's prayer practice unconstitutional. *Id*. at 30.

One of the elements the court examined was the sectarian nature of some of the prayers. *See id.* at 31. Notably, the court acknowledged that major problems arise when an emphasis is placed on an examination of the prayers' sectarian or nonsectarian nature. *Id*. at 28. The court correctly recognized that this Court has explicitly ruled that a government may not establish an official or civic religion in an effort to avoid an Establishment Clause violation. *Id*. at 29 (quoting *Lee v. Weisman*, 505 U.S. 577, 590 (1992)). Prohibiting prayer givers from mentioning any sectarian figures would tend to make a prayer civic, and not religious, in nature, and the

Establishment Clause does not prohibit governmental bodies from participating in actions that harmonize with religious canons. *McGowan v. Maryland*, 366 U.S. 420, 462 (Frankfurter, J., concurring). However, establishing a vague theistic or civic religion is itself a violation of the Establishment Clause. *Lee*, 505 U.S. at 590.

Requiring legislative prayers to not include any sectarian references is not required by either *Marsh* or *Allegheny*. *Rubin*, 710 F.3d at 1094. This makes practical sense. A Christian prayer will necessarily reference God and Jesus, just as a Muslim prayer will likely reference Allah. Requiring clergy members from these and other faiths to remove such references would strip away any meaning and purpose of their prayers.

Requiring legislative prayer leaders to make no sectarian references is too strict a requirement and one that goes beyond the standards required by this Court in *Marsh*. Furthermore, a focus on the content of legislative prayers necessarily violates the proscription in *Marsh* that if the prayer opportunity is not being used to proselytize or advance one religion over another, the court is not to evaluate or parse the content of particular prayers. *Marsh*, 463 U.S. at 795. This proscription has been reaffirmed as making "perfect sense" in more recent cases, as it would place the court in a role it cannot and should not serve. *See Joyner*, 653 F.3d at 351; *Rubin*, 710 F.3d at 1100.

The totality of the circumstances test is also problematic because of its emphasis on the effect of the policy without equal consideration given to the efforts to maintain neutrality in the policy. Legislatures can exercise abundant control over the neutrality of their prayer policies. They cannot, however, exercise such control over the religious backgrounds of the individuals who choose to accept their invitations to participate in prayer opportunities. It should not be forgotten that when a legislative body utilizes a neutral policy that is proactively inclusive, the

prayers will naturally reflect the religions of the prayer leaders and not the preferences of the legislative body. *Joyner*, 653 F.3d at 363 (Niemeyer, J., dissenting). To punish legislatures by banning their prayer practices for something so out of their control as the community's demographics would be to ban legitimate prayer practices where such a ban is not warranted by this Court. *See Marsh*, 463 U.S. at 794.

Furthermore, the totality of the circumstances test is highly subjective and thus more malleable and more likely to be applied differently throughout the nation's courts. The result would be uncertainty for legislative bodies that are interested in maintaining constitutionally sound prayer practices, which this Court has recognized is a legitimate right of American governmental bodies. *Id*. at 792; *Allegheny*, 492 U.S. at 602; *Joyner*, 653 F.3d at 346.

D. The Fourth Circuit's frequency test demands impermissible parsing of the language of legislative prayers and narrows the scope of what constitutes a valid legislative prayer practice under *Marsh*.

The Fourth Circuit, like the Second Circuit, has also adopted a test that narrows the bounds of *Marsh*. On multiple occasions, the Fourth Circuit has used a frequency test related to references of sectarian figures in legislative prayers to hold certain legislative prayer practices unconstitutional. *Joyner*, 653 F.3d at 352; *Wynne v. Town of Great Falls*, 376 F.3d 292, 298-99 (4th Cir. 2004). Both in *Joyner v. Forsyth County* and in *Wynne v. Town of Great Falls*, the court held the respective prayer policies unconstitutional largely because of the frequent references to Christian figures. *Joyner*, 653 F.3d at 352; *Wynne*, 376 F.3d at 298-99.

In *Joyner*, the court went a step further and said Forsyth County should have proactively discouraged references to sectarian figures in its legislative prayers. *Joyner*, 653 F.3d at 353. However, proactively discouraging references to sectarian figures is a much more restrictive standard than that ever imposed on legislative prayer practices by this Court. *See Marsh*, 463

U.S. at 794-95. To the contrary, this Court has stated that the government should ordinarily not have any role in determining the content of public prayers. *Lee*, 505 U.S. at 588.

The Fourth Circuit has interpreted the Establishment Clause as requiring legislative prayers to embrace a non-sectarian ideal. *Joyner*, 653 F.3d at 347. *See Simpson v. Chesterfield Cnty. Bd. of Supervisors*, 404 F.3d 276, 278 (4th Cir. 2005). It has explicitly stated that it only approves legislative prayer when it is nonsectarian in both policy and practice. *Id*. at 348. However, this Court has never held that such a narrow scope is required for legislative prayer practices to be constitutional. Indeed, this Court held that even the nonsectarian prayer at issue in *Lee v. Weisman* violated the Establishment Clause. *Lee*, 505 U.S. at 581. Reviewing *Marsh* as informed by *Lee* and *Allegheny*, the Eleventh Circuit concluded that the major cases decided by this Court that inform legislative prayer jurisprudence do not direct courts to inquire into the content of prayers unless and until the prayer opportunity has been exploited to advance a particular religious belief. *Pelphrey v. Cobb Cnty.*, 547 F.3d 1263, 1271 (11th Cir. 2008). Although this Court considered the nonsectarian nature of the chaplain's prayers in *Marsh*, the nonsectarian nature of the prayers did not form the basis for any bright-line rule. *Id*. The Fourth Circuit, having implemented such a narrow standard, seems to be creating its own limitations on legislative prayer policies, and these limitations go far beyond the requirements established by this Court.

The most appropriate policy a legislative body can take to avoid proselytizing or advancing one religion over others is to accept and welcome any volunteer from an established, local congregation and to consistently provide them with the same instructions.

II. MARTIN COUNTY BOARD'S LEGISLATIVE PRAYER PRACTICE DOES NOT VIOLATE THE FIRST AMENDMENT ESTABLISHMENT CLAUSE

A. Under the affiliation standard, Martin County Board's legislative prayer practice is constitutional.

In *Rubin*, the city council did not require attendees to participate in the prayers, the prayer leaders were not paid for their invocations, members of the council did not preview or involve themselves in the content of the prayers and the prayer givers were invited off of a list that included congregations of numerous denominations within the city's limits. *Rubin*, 710 F.3d at 1097-98. Martin County Board's prayer practice is nearly identical to the city council practice upheld in *Rubin* under the affiliation standard.

The Board proactively pursued an inclusive and neutral policy that was open to members of any local congregation. The list it maintained and used throughout its invitation process was consistently updated so as not to exclude parties who may have been interested in offering a prayer at an upcoming meeting. The same list was organized alphabetically and congregations were not grouped off according to their denominations. Furthermore, the Board purposefully avoided setting up strict guidelines for the prayers, specifically regarding the prayers' content. Other than to limit their allotted time to give the prayer to five minutes, the Board in no way attempted to control the actions or words of the prayer. This hands-off approach tends to show that the words of the prayer leaders were their own and were not being used by the Board to proselytize or advance any one religion. The Board also excluded the prayer content from its official meeting minutes, further illustrating an attempt to avoid unconstitutional affiliation with a religion.

According to Anne Dhaliwal, the frequency of Christian prayers at the Board's meetings was offensive. However, Anne Dhaliwal has shown no evidence to support a finding that the

frequency of Christian prayers resulted from an unconstitutional act by the Board and not merely a result of Martin County's demographics. Unless Anne Dhaliwal can show the Board engaged in purposeful discrimination, her point is moot. *See Pelphrey*, 547 F.3d at 1281.

Under the affiliation standard, Martin County Board's efforts to maintain a neutral prayer policy tend to show no attempted affiliation with Christianity over other religions, faiths or beliefs, thus the Board's policy should be deemed valid under the Establishment Clause.

B. Martin County Board's legislative prayer policy also withstands constitutional scrutiny under either the totality of the circumstances test or the frequency test.

If this Court adopts the totality of the circumstances test, an element of Martin County Board's prayer policy that merits consideration is the Board's purpose behind the practice. According to the Board, it has maintained its practice to bring together members of the community prior to engaging in important lawmaking efforts. This Court has recognized the legitimacy of using legislative prayer to solemnize the task of governance. *McGowan*, 366 U.S. at 442. Other considerations under the totality of the circumstances test will include a review of the invitation process, the content of the prayers and the actions of the board members and prayer leaders. When observing these elements of the Board's prayer practice all together, a reasonable observer would not conclude that the Board attempted to proselytize or advance any one religion over others. The Board opened the prayer opportunities up to a variety of religious denominations and treated the volunteers equally at the meetings. It also did not make the prayers a part of its official business of government by excluding the prayers from official Board meeting minutes.

If this Court deems the frequency test as the appropriate legal standard, it is important to note that the Court's own precedent will prohibit a parsing of the legislative prayer language for

sectarian references unless and until it has established that Martin County Board's practice proselytized or advanced one religion over others. In the instant case, Martin County Board did not cross this threshold under any of the available legal standards. Utilizing the frequency standard to parse the content of the prayers given is, therefore, not appropriate. *Marsh*, 463 U.S. at 794-95.

CONCLUSION

For the foregoing reasons, Petitioners Martin County and Martin County Board request this Court reverse the judgment of the Seventeenth Circuit Court of Appeals and render judgment in favor of Petitioners Martin County and Martin County Board.

Respectfully submitted,

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March 7, 2014

CERTIFICATE OF COMPLIANCE

I certify that the Brief for Petitioners contains 4,469 words, starting from the beginning (first word) of the statement of the case section and ending with the end (last word) of the conclusion.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Logan A. Wheeler
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